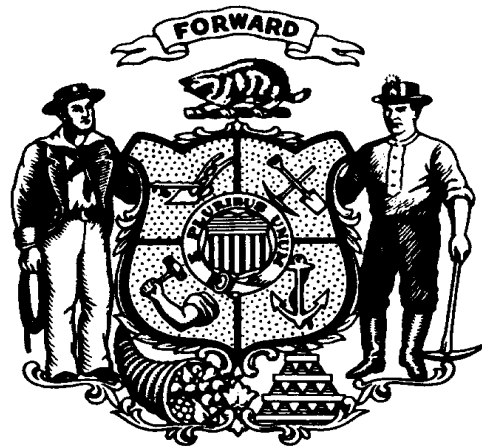


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Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

Agriculture, Trade & Consumer Protection – (3)

1. Rule adopted repealing s. ATCP 134.06 (3) (c) note and creating s. ATCP 134.06 (3) (d), relating to residential rental practices.

Exemption from finding of emergency

On June 21, 2000, the Legislature's Joint Committee for Review of Administrative Rules (JCRAR) found that the "note" to s. ATCP 134.06 (3) (c) is actually a rule and directed DATCP to adopt the "note" as an emergency rule. According to s. 227.26 (2) (b), Stats., DATCP must promulgate the emergency rule under s. 227.24 (1) (a), Stats., within 30 days after the JCRAR directs DATCP to do so. Because the JCRAR has directed DATCP to adopt this emergency rule, DATCP is not required to make any other finding of emergency.

Analysis prepared by the Department of Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers state landlord-tenant rules contained in ch. ATCP 134, Wis. Adm. Code. These rules affect over 1.5 million Wisconsin residents.

This emergency rule modifies current residential rental practices rules related to security deposit withholding. Under current rules, a landlord may not withhold a security deposit for normal wear and tear, or for other damages or losses for which the tenant cannot reasonably be held responsible. A "note" to s. ATCP 134.06 (3) (c) also states that a landlord may not withhold from a tenant's security deposit for routine

painting or carpet cleaning, where there is no unusual damage caused by tenant neglect.

Publication Date: July 20, 2000
Effective Date: July 20, 2000
Expiration Date: December 18, 2000
Extension Through: April 16, 2001

2. Rules adopted creating ch. ATCP 16, relating to importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis "non-modified accredited" state.

Finding of Emergency

(1) Bovine tuberculosis is a contagious, infectious and communicable disease caused by *Mycobacterium bovis* (*M. bovis*). It affects cattle, bison, deer, elk, goats and other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts. Bovine tuberculosis causes weight loss and general debilitation, and can be fatal.

(2) Wisconsin is currently classified by the United States Department of Agriculture (USDA) as "accredited-free" for tuberculosis.

(3) The USDA recently reclassified Michigan from "accredited-free" to "non-modified accredited," reflecting a higher risk of bovine tuberculosis.

(4) A significant number of bovine animals, goats and cervids are imported to Wisconsin from Michigan each year.

(5) The last known case of bovine tuberculosis in cattle in Wisconsin was confirmed in an animal imported from Michigan.

(6) If bovine tuberculosis becomes established in Wisconsin, it will pose a significant threat to the health of domestic animals and humans in this state.

(7) An emergency rule is needed to protect the public peace, health, safety and welfare. This emergency rule will help to control a serious disease in cattle, goats and cervids and will help protect the marketability of Wisconsin-raised animals.

Publication Date: August 11, 2000
Effective Date: August 11, 2000
Expiration Date: January 8, 2001
Hearing Date: September 19, 2000
Extension Through: March 8, 2001

3. Rules adopted creating s. ATCP 10.21 (10) (c) and (15) relating to reimbursement of Johne's disease testing costs.

Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection ("department") finds that an emergency exists and that an emergency rule is necessary to protect public health, safety and welfare. The facts constituting the emergency are as follows:

1. 1999 Wisconsin Act 9 was published on October 28, 1999. It appropriates \$100,000 for financial assistance to owners of livestock herds for conducting testing for Johne's

disease (paratuberculosis) for FY 2000–01. It requires the department to provide the financial assistance.

2. 1999 Wisconsin Act 9 requires the department to promulgate rules for implementing the financial assistance program.

3. Permanent rules establishing the program will not take effect before June 1, 2001. This emergency rule establishes an interim procedure which will allow owners of livestock herds to apply for grants under this program. Without this rule, no person would be able to apply for a grant in FY 2000–01 until at least June 1, 2001, and the department would have insufficient time to review and process the grant requests before the end of the fiscal year.

Publication Date: January 1, 2001
Effective Date: January 1, 2001
Expiration Date: May 31, 2001
Hearing Date: February 13, 2002

Commerce

(Flammable and Combustible Liquids – Ch. Comm 10)

Rules adopted revising **s. Comm 10.345**, relating to the effective date of required upgrades to aboveground bulk tanks that were in existence on May 1, 1991.

Finding of Emergency

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public health, safety and welfare. The facts constituting the emergency are as follows:

Wisconsin Administrative Code ch. Comm 10, Flammable and Combustible Liquids Code, became effective on 5/1/91. Section Comm 10.345 (2) contains requirements for bulk tanks in existence on that date to be provided with specific containment or leak detection upgrades within 10 years of that date. Some concerns have been expressed on the impact that compliance date could have on heating oil supplies and prices this winter. Construction requirements could result in a substantial number of tanks storing heating oil to be closed during the winter heating season in preparation for the required upgrades.

Based on these concerns, the department has agreed to extend the compliance deadline for 3 months until 8/1/01 if approvable tank system upgrade plans have been submitted to the department by 2/1/01.

Publication Date: January 6, 2001
Effective Date: January 6, 2001
Expiration Date: June 4, 2001
Hearing Date: February 27, 2001
 [See Notice this Register]

Commerce

(Ch. Comm 46)

Rules adopted creating **ch. Comm 46**, relating to “Petroleum Environmental Cleanup Fund Interagency Responsibilities,” and relating to site contaminated with petroleum products from petroleum storage tanks.

Exemption from finding of emergency

(See section 9110 (3yu) 1999 Wis. Act 9)

Analysis prepared by the Department of Commerce

Statutory authority: ss. 227.11 (2) (a) and 227.24 and s. 9110 (3yu) (b) of 1999 Wis. Act 9.

Statutes interpreted: ss. 101.143, 101.144, 292.11, and 292.31 and ch. 160

The proposed ch. Comm 46 is identical to ch. NR 746 that is being promulgated by the Department of Natural Resources.

Chapter Comm 46 provides that the Department of Natural Resources has authority for “high-risk sites” and that the Department of Commerce has authority for “low and medium risk sites.” The rule requires the Department of Natural Resources to transfer authority for sites with petroleum contamination from petroleum storage tanks to the Department of Commerce once the site is classified, unless the site is classified as a “high-risk site” or the site is contaminated by one or more hazardous substances other than petroleum products discharged from a petroleum storage tank. The rule also establishes procedures for transferring sites from one agency to the other whenever new information relevant to the site classification becomes available.

Chapter Comm 46 also provides jointly developed requirements for:

1. Selecting remedial bids and the setting of remediation targets for sites that are competitively bid or bundled with another site or sites.
2. Determining when sites may close.
3. Determining when remediation by natural attenuation may be approved as the final remedial action for a petroleum-contaminated site.
4. Tracking the achievement of remediation progress and success.
5. Reporting of program activities.

Publication Date: May 17, 2000
Effective Date: May 18, 2000
Expiration Date: October 15, 2000
Hearing Dates: June 15, July 10 & 12, 2000
Extension Through: February 11, 2001

Employment Relations Commission

Rules were adopted amending **ch. ERC 3, Appendices A, B and C** relating to the calculation of a qualified economic offer in collective bargaining with professional school district employees.

Finding of Emergency

As required by s. 227.24 (1), Stats., we find that it is necessary to promulgate the amendment to ch. ERC 33, Appendices A, B, and C as an emergency rule to preserve the public peace, health, safety and welfare. Absent promulgation of this emergency rule, the timely and peaceful resolution of collective bargaining disputes in Wisconsin will be endangered.

The amendment of ch. ERC 33, Appendices A, B and C is required by 1999 Wisconsin Act 9’s amendment of the statutory definition of a qualified economic offer in s. 111.70(1)(nc)1.c., Stats., and the ruling of the Wisconsin Court of Appeals in *Racine Education Ass’n v. WERC*, 238, Wis.2d 33 (2000). The amended statutory definition of qualified economic offer first applies to school district professional employee bargaining agreements covering the period of July 1, 2001 through June 30, 2003.

As amended, ch. ERC 33, Appendices A, B and C allow a school district to accurately calculate the level of salary increase, if any, which the district must offer to the labor organization representing the district’s professional employees as part of a qualified economic offer. As amended, ch. ERC 33, Appendices A, B and C implement (1) the statutory requirement that salary increases due to a promotion or the attainment of increased professional qualifications are not part of a qualified economic offer; and (2) the ruling of the

Court in *Racine Education Ass'n v. WERC* that a qualified economic offer cannot exceed a 3.8% increase in salary and fringe benefit costs.

Publication Date: January 22, 2001
Effective Date: January 22, 2001
Expiration Date: June 20, 2001

Financial Institutions – Division of Securities

Rules adopted revising **ch. DFI–Sec 5**, relating to adopting for use in Wisconsin the Investment Adviser Registration Depository.

Finding of Emergency

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows:

The U.S. Securities and Exchange Commission (“SEC”), in conjunction with the North American Securities Administrators Association (“NASAA”), an organization comprised of the securities administrators of all 50 states, including Wisconsin, has developed an electronic filing system for licensure of investment advisers to replace the paper filing system which heretofore has been used in all states. The system, the Investment Adviser Registration Depository (IARD), will permit investment advisers to satisfy their initial and renewal filing obligations to obtain licensure under the federal and state securities laws with a single electronic filing made over the Internet, instead of having to make separate paper filings with the SEC and with each state in which the investment adviser seeks to do business.

After several years in development and a pilot phase in the fall of 2000 that the Division participated in, the commencement date for states and the SEC to accept filings under the IARD has been set for January 1, 2001. Consequently, NASAA member states, including Wisconsin, need to take the necessary rule-making or other regulatory action by January 1, 2001 to enable investment advisers to make their licensing filings electronically. The Emergency Rules make the necessary changes to the Division’s investment adviser license filing provisions that are immediately needed to adopt the IARD for use in Wisconsin by investment advisers.

The IARD will be operated by NASD Regulation, Inc., a self-regulatory organization that for 20 years has operated an equivalent electronic filing system (the Central Registration Depository or “CRD”) for federal and state licensure of securities broker-dealers and their sales agents. As with the CRD, the IARD will provide the advantages of: (1) elimination of paper filings; (2) a single filing will satisfy federal and state filing requirements; and (3) automatic payment of state licensing fees to the states where the investment adviser does business. Additionally and importantly, the IARD will provide the investing public with immediate, real-time access to information about investment advisers and their representatives.

Congress in its passage of the National Securities Markets Improvement Act in 1996 provided for the development of this electronic filing system for investment advisers, and the SEC has adopted rules mandating such. The SEC and the states have been working together to develop both the necessary changes to the filing form (Form ADV), and to the filing procedures to achieve uniformity in the filing processes and procedures. Additionally, to achieve uniformity among the states in the adoption of rules implementing the IARD, a

NASAA Working Group has developed Model Rules (with commentary) to coordinate with the SEC requirements. The Wisconsin Emergency Rules adopted herein follow the NASAA Model Rules.

The Emergency Rules provide for: (1) a revised Licensing Procedure section in s. DFI–Sec 5.01 (1) and (2); (2) temporary and permanent hardship exemption provisions in s. DFI–Sec 5.01 (11); (3) a revised brochure rule in s. DFI–Sec 5.05(8); (4) revised filing periods and license expiration dates for licenses of investment advisers and investment adviser representatives, as well as for license withdrawals in ss. DFI–Sec 5.07 and 5.08; (5) a revised procedure for filings by federal covered advisers in s. DFI–Sec 5.11; and (6) a specific section in s. DFI–Sec 5.12 dealing with transition filings. Separate from these Emergency Rules, the Division will be issuing General Orders to further implement timing for various categories of filers, and which will provide partial fee rebates for 2001 for the smaller, state-only licensed advisers to help defray the initial one-time fee (of \$150) they must pay for their initial participation in the IARD.

Publication Date: December 29, 2000
Effective Date: January 1, 2001
Expiration Date: May 31, 2001

Health & Family Services (Community Services, Chs. HFS 30–)

Rules were adopted creating **ch. HFS 79**, relating to state supplemental security income payments.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Sections 49.77 and 49.775, Stats., authorize the Department to administer Supplemental Security Income (SSI) state supplemental payments to low income elderly and disabled residents of Wisconsin and their dependent children. These SSI payments are funded by state general purpose revenue and federal Temporary Assistance for Needy Families (TANF) grant funding in excess of \$140,000,000 per state fiscal year. These payments are distributed monthly to approximately 100,000 beneficiaries and their dependent children. Neither s. 49.77 or 49.775, Stats., direct the Department to develop administrative rules to administer the program.

An unavoidable aspect of the program is the Department’s need to periodically recover payments incorrectly made to benefit recipients. Overpayments and incorrect payments occur due to delays in transmission of eligibility and pricing information between the federal Social Security Administration and the Department and are not due to the Department’s error or omission. On November 24, 1999, by order of the Wisconsin Court of Appeals, District II, the Department was found, absent administrative rule, to lack the authority to administratively recoup benefits overpaid to recipients who were ineligible for the benefits or to whom the Department paid an incorrect amount of benefits. The Department sought to appeal the decision to the Wisconsin Supreme Court, but recently learned that the Supreme Court will not hear the case. The Department’s inability to recover payments made in error will cost the Department about \$10,000 per month. Developing and promulgating permanent administrative rules to address the Court’s decision will require at least 7 months, thereby costing the Department approximately another \$70,000. The Department deems this

unanticipated expense a threat to the public welfare insofar as Wisconsin and federal taxpayers should not be called upon to shoulder the burden of these unanticipated and undeserved expenses. Therefore, the Department is promulgating this emergency rule until the Department can promulgate a similar permanent rule.

This emergency rule provides the Department with the authority to recoup benefits incorrectly paid under ss. 49.77 and 49.775, Stats., and to again effectively administer both state and federal public welfare funding. By issuing this rule, the Department will effectively recover taxpayer monies to which recipients were not entitled, pending the promulgation of permanent rules.

Publication Date: September 15, 2000
Effective Date: September 15, 2000
Expiration Date: February 12, 2001
Hearing Date: December 13, 2000
Extension Through: February 27, 2001

Health & Family Services (Health, Chs. HFS 110–)

Rules adopted revising **ch. HFS 163**, relating to certification for the identification, removal and reduction of lead-based paint hazards.

Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the rules are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Summary

September 2000 regulations issued by the U.S. Department of Housing and Urban Development (HUD) assume states' commencing lead abatement activities compliant with the federal regulations beginning March 15, 2001. The Department estimates that about 5,000 structures in the state require lead abatement activities. About 300 persons need to be trained to conduct lead abatement activities on these 5,000 structures. Without DHFS issuance of revised training program requirements, Wisconsin's lead training programs will not alter their courses to HUD standards or receive state accreditation in time for sufficient personnel to be trained by the time high demands for lead abatement commences. To sanction ill-trained lead abatement personnel by March 15, 2001, the Department would needlessly endanger the health of both untrained lead abatement personnel and the public whose residences are affected.

Lead Abatement Activities

Residences built before 1978 have a high likelihood of containing lead-based paint. When lead-based paint is in poor condition or when it is disturbed through activities such as sanding or scraping, the paint can break down into chips and dust that become a potential source of lead poisoning for occupants. Wisconsin has nearly 500,000 rental units and 1 million owner-occupied units built before 1978 and presumed to contain lead-based paint.

Exposure to lead in paint, dust or soil has both short-term and long-term adverse health effects on children, causing learning disabilities, decreased growth, hyperactivity, impaired hearing, brain damage and even death. When not fatal, these effects on the body last a lifetime. Of 63,400 Wisconsin children under the age of 6 screened for lead poisoning in 1999, 3,744 were identified as having lead poisoning. However, the number of children affected by lead

poisoning is probably much greater, since the 63,400 screened represented only 16% of the state's children under the age of 6. Many of these children would not become lead poisoned if pre-1978 dwellings did not have deteriorated paint or lead-based paint on friction or impact surfaces and if lead-safe techniques were used when disturbing lead-based paint.

Lead poisoning can also affect older children and adults. In 1999, a 40-year old man employed to remove paint from windows of a rental dwelling was severely lead poisoned. He was hospitalized with complaints of headaches and joint pain. He underwent multiple sessions of chelation therapy to remove some of the lead from his blood, but still suffered serious neurological damage, which affected his speech and balance. This man's lead poisoning could have been avoided if he had been trained to use lead-safe techniques and personal protection equipment.

Existing Wisconsin Law

Chapter 254, Stats., provides for a comprehensive lead hazard reduction program, including lead exposure screening, medical case management and reporting requirements, and the development of lead training accreditation and certification programs. Under the authority of Chapter 254, Stats., the Department promulgated Chapter HFS 163, Wis. Adm. Code, in 1988 to provide rules for the certification of individuals performing lead hazard reduction and for the accreditation of the courses that prepare individuals for certification. These rules have been revised over time to meet requirements of the U.S. Environmental Protection Agency (EPA).

Wisconsin met federal standards for a state-administered lead training accreditation and certification program and received EPA authorization effective January 27, 1999. The Department's Asbestos and Lead Section of the Bureau of Occupational Health administers and enforces lead-based paint training, certification and work practice provisions of Chapter HFS 163, Wis. Adm. Code. The Section operates on a combination of program revenue and lead program development grants from the EPA.

Under Chapter HFS 163, Wis. Adm. Code, a person offering, providing or supervising lead-based paint activities for which certification is required must be certified as a lead company and may only employ or contract with appropriately certified individuals to perform these activities. An individual may apply for certification in the following disciplines: lead (Pb) worker, supervisor, inspector, risk assessor and project designer. For initial certification, the individual must be 18 years of age or older, must meet applicable education and experience qualifications, must successfully complete certification training requirements and, to be certified as a lead (Pb) inspector, risk assessor or supervisor, must pass a certification examination. All individuals must have completed worker safety training required by the U.S. Occupational Health and Safety Administration for lead in construction. In addition, a lead (Pb) worker, supervisor, or project designer must complete a 16-hour lead (Pb) worker course, a lead (Pb) supervisor or project designer also must complete a 16-hour lead (Pb) supervisor course, and a lead (Pb) project designer must complete an 8-hour lead (Pb) project designer course. A lead (Pb) inspector or risk assessor must complete a 24-hour lead (Pb) inspector course and a lead (Pb) risk assessor must also complete a 16-hour lead (Pb) risk assessor course.

New Federal Regulations

The U.S. Department of Housing and Urban Development (HUD) revised 24 CFR Part 35 effective September 15, 2000.

The regulations require most properties owned by the federal government or receiving federal assistance to conduct specified activities to make the property lead-safe. Specifically, these regulations affect property owners receiving federal rehabilitation funds and landlords whose tenants receive federal rental assistance. To meet HUD's lead-safe standards, most affected properties must have a risk assessment completed and must use certified persons to reduce or eliminate the lead-based paint hazards identified in the risk assessment report. Property owners must also use trained people to perform maintenance or renovation activities and must have clearance conducted after completing activities that disturb lead-based paint. Clearance is a visual inspection and dust-lead sampling to verify that lead-based paint hazards are not left behind. The HUD regulations also establish a new, research-based standard for clearance that is more protective than HUD's previously recommended standard.

The EPA has issued a memorandum urging States to implement a lead sampling technician discipline for which a 1-day training course would be required. Addition of this discipline would help to meet the increased demand for clearance under both the HUD regulations and renovation and remodeling regulations being considered by EPA.

The EPA is preparing to promulgate lead renovation and remodeling regulations under 40 CFR Part 745. Under these training and certification regulations for renovators, any person who disturbs paint in a pre-1978 dwelling, other than a homeowner performing activities in an owner-occupied dwelling, will have to complete lead-safe training. EPA is also considering requiring clearance after any activity that disturbs paint in a pre-1978 dwelling, except when work on owner-occupied property was done by the property owner.

New Wisconsin Law

1999 Wisconsin Act 113 requires the Department to establish a process for issuing certificates of lead-free or lead-safe status and registering the properties for which certificates are issued. If a dwelling unit has a valid certificate of lead-free or lead-safe status when a person who resides in or visits the unit is lead poisoned, the property owner, and his or her agents and employees are generally immune from civil and criminal liability for their acts or omissions related to the lead poisoning or lead exposure. Act 113 also requires the Department to establish the requirements for a training course of up to 16 hours that property owners, their agents and employees may complete in order to receive certification. The Department must also specify the scope of the lead investigation and lead hazard reduction activities that may be performed following certification. Act 113 specifies that administrative rules to implement Act 113 must be submitted to the Legislative Council Rules Clearinghouse by December 1, 2000. The rules providing the standards for lead-free and lead-safe property, and the procedures for issuing certificates of lead-free status and lead-safe status, are being promulgated separately and are not expected to be published for several months.

Result of Changing Federal and State Requirements

New HUD regulations create an urgent need for appropriately trained and certified workers to conduct activities that reduce or identify lead-based paint hazards. Due to a lack of trained and certified individuals to perform the activities required by the HUD regulations, housing agencies in Wisconsin have been forced to ask HUD for a 6-month extension before beginning enforcement of the

regulations. To be granted the extension, the agencies must provide a plan for increasing the number of certified persons to meet the demand by March 15, 2001. If HUD does not grant an extension, millions of dollars in federal funding for rehabilitation and lead hazard reduction may be lost.

In addition to the demand for certified persons generated by the HUD regulations, Act 113 is generating its own demand for certified persons. Many property owners want to begin reducing lead-based paint hazards on their properties in order to meet the standards for lead-free or lead-safe property when the standards take effect. Although property owners and their employees may be certified now under Chapter HFS 163, Wis. Adm. Code, some property owners feel 5 days of training is too extensive for the work they will be performing. Act 113 requires the Department to establish the requirements for a training course of up to 16 hours that property owners, their agents and employees may complete in order to receive certification. This emergency rule meets the requirement of Act 113 by providing for certification as a lead (Pb) low-risk supervisor to independently perform limited lead hazard reduction activities after only 2 days of training.

Department Response

The Department is gravely concerned that a lack of properly trained and certified individuals to meet the increased demand may lead to an increase in lead poisoning due to work being performed by untrained individuals. The new disciplines in this emergency order will help meet the demand for certified individuals because the rules reduce the training hours required for certification by targeting training to specific activities. With more individuals becoming certified, housing authorities and property owners will be able to comply with HUD regulations and property owners will be able to reduce lead-based paint hazards in preparation for the implementation of Act 113 lead-free and lead-safe property standards.

In promulgating these revisions to the certification and training accreditation requirements under chapter HFS 163, the Department seeks to meet the needs of all the parties affected by training or certification requirements under State, federal or local lead regulations. For each revision made by these rules, the Department considered the impact of the cost, the ease with which persons could comply, the ability to easily move to a higher level of certification, and the consistency with other regulations. In developing the low-risk worker and low-risk supervisor disciplines, the Department also considered potential requirements of EPA's renovation and remodeling regulations.

The Department divided required training into smaller independent modules to allow individuals to complete the least amount of training necessary to safely and accurately perform the lead-based paint activities for which the individual becomes certified. In addition, the Department:

- Divided lead hazard reduction activities into those that are low-risk and high-risk.
- Divided site management activities into project design and supervision of low-risk versus high-risk activities.
- Divided lead investigation activities conducted by lead risk assessors into sampling, inspection, and hazard investigation.
- Revised the definitions, training and certification requirements and accreditation standards to reflect these categories of activities.

Publication Date: December 1, 2000

Effective Date: December 1, 2000

Expiration Date: April 30, 2001

Hearing Date: January 12, 16, 17, 18 and 19, 2001

Natural Resources – (3)

(Fish, Game, etc., Chs. NR 1–)

1. Rules adopted creating **s. NR 1.445** and revising **ch. NR 51**, relating to the stewardship program.

Exemption from finding of emergency

Emergency rules are necessary for the department to act as authorized under s. 23.0917, Stats., as created by 1999 Wis. Act 9. According to section 9136 (10g) of this Act, the department is not required to make a finding of emergency or provide evidence that promulgating this emergency rule is necessary for the preservation of public peace, health, safety or welfare. In addition, the emergency rules promulgated under this authority remain in effect until June 30, 2001, or until the date on which the corresponding permanent rules take effect, whichever is sooner.

Analysis prepared by the Department of Natural Resources:

Statutory authority: ss. 227.11 (2), 227.24, Stats, and s. 9136 (10g), 1999 Wis. Act 9

Statutes interpreted: ss. 23.09 (19), (20) and (20m), 23.0917, 23.092, 23.094, 23.096, 23.098, 23.17, 23.175, 23.197, 23.27, 23.29, 23.295, 30.24 and 30.277, Stats.

The emergency rule:

- Implements a statutory change that requires the department to obtain county approval for acquisitions in counties where greater than 66% of the land is publicly owned.
- Moves three stewardship grant programs (local park aids, urban green space, and urban rivers) from ch. NR 50 to ch. NR 51. Improves grant administration by combining all stewardship grant programs into one chapter.
- Revises and expands program definitions, including definitions for nature-based outdoor recreation and middle kettle moraine, to clarify terms, reflect statutory changes and improve grant administration.
- Implements a statutory change that expands grant eligibility to include non 501 (c) (3) organizations.
- Reorganizes the structure of chapter 51 to incorporate new programs and local government programs.
- Implements statutory changes that identify priorities and expand the purposes for which nonprofit conservation organizations can receive grants. Makes minor revisions to improve grant administration.
- Makes minor revisions to bring the natural areas program in line with statutory changes.
- Establishes the administrative framework for the new bluff protection program. Defines “bluff” and sets program priorities.
- Makes minor revisions in the habitat areas and fisheries program to bring the program in line with statutory changes and improve grant administration.
- Establishes the administrative framework for acquisition of property by the department and nonprofit conservation organizations to preserve wild lakes. Defines “wild lake.”
- Makes minor revisions to the stream bank program to bring the program in line with statutory changes.
- Makes minor revisions to the state trails program to improve grant administration.
- Implements a statutory change that makes nonprofit conservation organizations eligible for grants for state property development. Revises grant priorities and makes minor revisions to improve administration of the state property development grant program.
- Establishes the administrative framework and sets priorities for the new Baraboo Hills subprogram.

- Clarifies and streamlines the administration of local assistance grants to governmental units.
- Clarifies and streamlines the administration of the local park aids, urban green space, and urban rivers grant programs which provide grant funds for governmental units and nonprofit conservation organizations. Implements statutory changes that require that all grants issued under these programs be for nature-based outdoor recreation. Lists eligible nature-based projects and sets grant priorities. Also implements a statutory change that allows “shoreline enhancements” to be funded under the urban rivers program and provides a list of typical shorelines enhancements that will qualify for the program.
- Establishes the administrative framework for the new acquisition of development rights program that provides grant funds to local governments and nonprofit conservation organizations. Sets priorities and identifies other factors that will be considered in awarding grants.
- Makes minor revisions to improve administration of the Heritage state park and forest trust program.

Publication Date: September 1, 2000

Effective Date: September 1, 2000

Expiration Date: See section 9136 (10g), 1999 Wis. Act 9

Hearing Dates: November 1 & 2, 2000

2. Rules adopted revising **ch. NR 47**, relating to the federal cost sharing program to suppress gypsy moths.

Finding of Emergency

An emergency rule is necessary in order to make the cost shared gypsy moth suppression program available for aerial treatments in May 2001. Given the survival of caterpillars this summer, the department expects that populations of gypsy moth will be high enough in some localities in 2001 to necessitate suppression to protect tree health. In order to offer participation in the aerial treatment project and cost sharing from the U.S. Forest Service, it is necessary that preparatory work be done this fall and winter to define treatment blocks. When gypsy moth outbreaks occur, the public typically becomes concerned and looks for ways to reduce the population of gypsy moth to tolerable levels. Treatments to kill large numbers of the pest can be expensive, at times damaging to our native insects and other animals, or even dangerous to the landowner and others when pesticides are not used according to directions. The Department organized suppression program will provide the public with a safe, effective and affordable means to prevent damage to their trees.

Publication Date: November 10, 2000

Effective Date: November 10, 2000

Expiration Date: April 9, 2001

Hearing Date: January 17, 2001

3. Rules adopted revising **ch. NR 6** relating to defining unreasonable and improper speed to include operating a snowmobile at speeds greater than 50 MPH during the hours of darkness.

Finding of Emergency

During the 1999–2000 snowmobile season conservation wardens investigated 38 fatal snowmobile accidents. Of these accidents, 10 deaths could be directly attributed to operation at excessive speed during the hours of darkness. Fourteen other deaths could have been avoided if the operators had observed more prudent speeds, allowing them to avoid nighttime hazards. Potentially 24 of the 38 fatalities could have been avoided if the snowmobiler had been operating at slower speeds during the hours of darkness. Unless an immediate change is made in the snowmobile laws similar number of avoidable fatalities will occur during the

2000–2001 snowmobile season. Even greater numbers could occur if the early snows seen in November of 2000 remain, thereby extending the snowmobile season beyond that experienced in 1999–2000.

Publication Date: December 15, 2000
Effective Date: December 15, 2000
Expiration Date: May 14, 2001
Hearing Date: January 17, 2001

Public Service Commission (2)

1. Rules adopted creating **s. PSC 2.06**, relating to procedures for the confidential treatment of records.

Exemption from finding of emergency

At the direction of the Joint Committee for Review of Administrative Rules under s. 227.26 (2) (b), Stats., the Commission adopts a rule to create s. PSC 2.06, Wis. Adm. Code, relating to procedures for the confidential treatment of records.

Analysis by the Public Service Commission

Statutory authority: ss. 196.02(1) and (3), 227.11, 227.24 and 227.26, Stats.

Statutes interpreted: ss. 196.14, 196.72 and 196.795 (9), Stats.

On August 15, 2000, the Commission voted to promulgate administrative rules on requests for confidential handling of documents filed with the Commission. On September 20, 2000, the Joint Committee for Review of Administrative Rules directed the Commission to adopt a rule on the subject under s. 227.26 (2) (b), Stats. This rule creates a process for obtaining a designation of confidential status. Under the rule, a determination on whether information shall be treated confidentially shall be made at the time the information is given to the Commission. Under previous Commission procedures, if a person filing a document sought confidential treatment of information in the document, the filer could do so by identifying the grounds under which confidentiality could be granted. The Commission would accept the filing, but the acceptance did not constitute a determination that public access to the information would not be permitted. The Commission would determine if confidential status should be granted when a request for that information was made by another person.

Under this rule, a person who wishes the Commission to keep confidential information in the possession of the Commission, or requested by the Commission, must make an application for confidential status. The application must identify the information for which confidential treatment is sought and identify the authority under which confidential status should be granted. Within 21 days after receiving an application, the Commission may seek additional information from the applicant, if needed, to make a confidentiality determination. The applicant must respond within 30 days to the information request.

The Commission will make a determination on a confidentiality request within 30 days of receiving the additional information or within 30 days of the filing of the application if no additional information is needed. The

determination will specify what, if any, information is given confidential treatment and the basis for that determination.

The Commission will give the applicant written notice of its determination. The Commission shall post all determinations regarding confidentiality on its website and may give other appropriate notice. If an applicant is authorized to file information confidentially in the context of a Commission proceeding, the applicant shall serve a copy of the determination on all persons listed on the service list for that proceeding.

Publication Date: October 23, 2000
Effective Date: October 23, 2000
Expiration Date: March 22, 2001

2. Rules adopted amending **s. PSC 116.06 (1) and (2)**, relating to the triggering mechanism and the period of time in which fuel costs are estimated for purposes of seeking an emergency or extraordinary rate increase under s. PSC 116.06.

Finding of Emergency

In order to preserve the health, safety, and welfare of Wisconsin residential, commercial and industrial ratepayers it is necessary to amend s. PSC 116.06 (1) and (2), which would allow the Commission to grant a rate increase to an applicable Class A electric public utility based on estimated fuel cost for the year in which it is reasonably anticipated that the rate increase would go into effect. In granting the rate change the Commission must find, after a hearing confined solely to fuel costs, that the utility is eligible to seek an emergency or extraordinary rate increase under the current rule, an emergency or extraordinary increase in the cost of fuel exists, and the fuel cost increase will affect the utility's average yearly fuel costs for the year in which it is reasonably anticipated that the rate increase would go into effect so as to fall outside the established annual range for that year. This change would assist in implementing the rule at a time of volatile fuel costs.

Publication Date: December 28, 2000
Effective Date: December 28, 2000
Expiration Date: May 27, 2001
Hearing Date: January 23, 2001

Tobacco Control Board

Rules adopted creating **ch. TCB 1**, relating to the administration and awarding of grants for tobacco control and establishing criteria for recipients of the grants.

Finding of Emergency

The Wisconsin Tobacco Control Board finds that an emergency exists and that a rule is necessary for the immediate preservation of the health, safety and welfare of Wisconsin residents, particularly youth and current smokers. A statement of the facts constituting the emergency is as follows:

The health and fiscal impact of tobacco use are well documented. In Wisconsin alone, 7,800 deaths occur each year from tobacco-related disease. In addition, Wisconsin government, residents and health care providers pay over \$1.3

billion annually for health care costs associated with tobacco use.

While tobacco's effects are in individuals' futures, immediate action is required to reverse the recent trend toward rising youth addiction and resulting long-term negative health effects of tobacco use. According to the Centers for Disease Control and Prevention, over 3,000 youths begin smoking every day in the United States. In Wisconsin alone, there has been a 19 percent increase in high school tobacco use since 1993, with over 38 percent of high school youth smoking a cigarette in the last month. This increase in youth tobacco use is particularly threatening since over 90 percent of current smokers began smoking before the age of 18. Of the current 1 million smokers in Wisconsin, half will die from tobacco-related diseases such as emphysema, lung cancer, heart disease and stroke.

In addition, tobacco use among specific populations continues to present an ongoing threat to the health of Wisconsin citizens. Wisconsin has a rate of tobacco use among pregnant women that is 30 percent higher than the national average. In addition, the national smoking rate among African-American youth doubled from 14 percent in

1993 to 28 percent in 1997. Finally, the 48% smoking rate of Medicaid recipients is twice the rate of the general population.

The ongoing and emerging health impacts and costs associated with tobacco use necessitate the immediate implementation of the comprehensive initiative to address tobacco use in Wisconsin.

The Board, through this order, is creating chapter TCB 1 relating to the Board's administering and awarding grants for tobacco control and establishing criteria for recipients of the grants. The rule is being promulgated under the authority of s. 255.15 (1m), Stats., for the purpose of establishing criteria, procedures, requirements and conditions for the award of project grants from the appropriation under s. 20.436 (1) (tc), Stats., to organizations that operate or propose to operate programs reducing tobacco use by preventing tobacco use, promoting tobacco use cessation and eliminating environmental tobacco smoke.

Publication Date:	November 7, 2000
Effective Date:	November 7, 2000
Expiration Date:	April 6, 2001
Hearing Date:	January 10, 2001

Scope statements

Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

Subject

Current rules require all registration seals or stamps affixed to drawings and specifications to be filed as public documents to be original.

Objective of the Rule. To authorize registrants to use electronic signatures, to include use of registration seals or stamps, when submitting drawings and specifications as public documents, as permitted by the government unit receiving the drawings and specifications. This proposed change would enhance the options consistent with available technology and need a more efficient means to submit original documents required as public records.

Policy analysis

The proposed rule would revise s. A–E 2.02 (7), to include reference to affixing a seal or stamp to specifications as well as drawings to be filed as original documents. The rule also clarifies which authority a registrant must follow when using electronic signatures.

Statutory authority

Sections 15.08 (5) (b), 137.06, 227.11 (2) and ch. 443, Stats.

Staff Time Required

100 hours.

Employment Relations Commission

Subject

Recodification of the rules to bring them into compliance with statutory changes and agency practice and to allow customers to better utilize technology when communicating with the agency.

Description of Policy Issues

The commission's present administrative rules effectuate the statutory policy of labor peace as will the recodified rules.

Statutory Authority

Sections 111.09 (1), 111.71 (1), 111.94 (1), and 227.11

Staff Time Required

It is estimated that recodification will require 500 hours of state employee time.

Natural Resources

(Environmental Protection – Water Regulation)

Subject

Small dam removal grant and abandoned dam removal program.

Description of Policy Issues

Development of an administrative code pursuant s. 31.385, Stats., to administer a grant program for the removal of small dams (as defined by that section of the statute) and related

stream restoration activities. The program is funded by a minimum of \$250,000 of bonded money. Municipalities, inland lake protection and rehabilitation districts and private dam owners are eligible to apply for these funds. Additionally, the codification of existing implementation guidance for funds to remove abandoned dams.

This program is of primary interest to dam owners and environmental groups interested in stream restoration. Consultants, contractors, riparian owners may also be impacted by this program.

The small dam removal grant program is a newly funded program that supports current activities of the department to address the issues of deteriorating dams and river/habitat restoration. This will be the first grant program available to private dam owners to assist with voluntary dam removal and river restoration activities.

In the past the Department has administered funds to remove abandoned dams through implementation guidance. This rule will essentially codify that guidance.

Statutory Authority

Section 31.385

Staff Time Required

620 Hours

Natural Resources

(Environmental Protection – Water Regulation)

Subject

Define "impoundment" for purposes of s. 30.134, Stats. Define "similar conveyance" for purposes of s. 30.133, Stats. Further define "swim rafts" for purposes of s. 30.13, Stats.

Description of Policy Issues

Section 30.134, Stats., allows the public to use exposed shorelands on streams, but not on lakes and impoundments. Wisconsin law does not define "impoundment". Section 30.133, Stats., prohibits the transfer of riparian rights by easement or "similar conveyance". "Similar conveyance" is not defined under Wisconsin law. A definition is needed to determine which leases are "similar conveyances". Currently swim rafts are defined very broadly under s. 30.01 (6e), Stats. A clarification is needed to determine whether water trampolines should be regulated in the same manner as swim rafts. The Wisconsin Association of Lakes and lake front property owners will have an interest. The "similar conveyance" language will be of interest to marina operators.

If water trampolines are not regulated as swim rafts, they will require a permit under s. 30.12, Stats. Definitions of "impoundment" and "similar conveyance" will conform to current Department interpretations.

Statutory Authority

Section 227.11 (2) (a)

Staff Time Required

32 Hours

Natural Resources (Fish & Game, etc.)

Subject

Revisions to ch. NR 16, Subchapter II – Permitting the Use of Natural Bodies of Water as Fish Farms.

Description of Policy Issues

Issue 1: The department is proposing to work with the aquaculture industry to develop a revised “Natural Body of Water” definition. Interested parties will include the aquaculture industry as well as 11 environmental groups that commented on the original rule.

Since initial implementation of this code in January 2000, the department has identified a number of legal “grey areas” created by the definition of “Natural Body of Water”. For example, the current definition of Natural Body of Water requires a fish farmer to obtain a ch. NR 16 permit for a pond where Navigable Water Law under ch. 30 would determine the pond to be a private waterbody. In addition, the Aquaculture Industry continues to request a change to the same definition exempting waterbodies previously licensed by the DNR as private and artificial fish hatcheries ponds.

Issue 2: The department is proposing to develop specific language in rule that would specify how the department will evaluate Natural Water Body permit renewals.

The aquaculture industry has requested the department to provide more specific wording in rule describing when and on what basis, natural water body permit renewals may be approved or denied.

Issue 3: General housekeeping changes including clarifying language and correcting dates.

The housekeeping changes will bring the rule up-to-date with the current implementation schedule.

Statutory Authority

Section 29.733

Staff Time Required

170 Hours

Natural Resources (Environmental Protection – Air Pollution Control)

Subject

The Natural Resources Board at their December 2000 meeting directed staff to prepare administrative rules to control mercury air emissions under the authority of s. 285.11 (9), Stats. This action was initiated in response to a petition received in May 2000 that was signed by several legislators and representatives of environmental organizations, conservation groups, sporting clubs and lake associations. Staff were directed by the board to present proposed rules, with a request for public hearing authorization, at the March 2001 Natural Resource Board meeting.

Description of Policy Issues

The electric utilities, independent power producers, paper industry and industrial or commercial sources of mercury

emissions, in addition to the petitioners, are the groups interested in the issue. In developing the rules, staff will address the following:

- The percentage reductions and a phased schedule for achieving the reductions.
- A methodology for determining baseline emission levels.
- An emissions trading and banking system.
- A provision to allow for alternative compliance options, such as projects that achieve mercury emission reductions from sources not covered by the rules.
- A provision that would allow the Department to grant variances, such as deadline extensions or alternative emission limits, if it determines that compliance with the reduction requirements is not technologically feasible, would jeopardize electric reliability or would cause unreasonable hardship provided that the variance would not result in undue harm to human health or the environment.
- A provision that the Department, by the end of 2007, submit a report to the Board that evaluates the mercury reduction requirements in light of electric reliability, scientific and technology developments, and federal regulatory activity. Based on this review Department staff would recommend adjustments to the reduction requirements, if appropriate. The Department should also evaluate impacts of emissions trading on local water quality and, if needed corrective actions.

Statutory Authority

Section 285.11 (9)

Staff Time Required

1216 Hours

Social Workers, Marriage and Family Therapists and Professional Counselors

Subject

Clarify the requirements regarding the practice of psychotherapy by advanced practice social workers, independent social workers and independent clinical social workers.

Description of Policy Issues

Objective of the rule. Chapter SFC 7 sets forth the requirements for the practice of psychotherapy by advanced practice social workers, independent social workers and independent clinical social workers. The language of the rule has been found to be unclear. Proposed changes will improve the language of the rule to clarify existing requirements.

Statutory Authority

Sections 15.08 (5) (b) and 227.11 (2), Stats.

Staff Time Required

80 hours

Social Workers, Marriage and Family Therapists and Professional Counselors

Subject

To require schools offering social work courses offered to students applying for social worker training certificates to submit course descriptions of the proposed courses to the Social Worker Section for approval well in advance, perhaps six months prior to being taught.

Description of Policy Issues

Objective of the rule. Applicants for social worker training certificates must complete certain educational requirements, either before or after being granted the training certificate. Schools offering such courses may seek approval of their educational programs from the Social Worker Section. Currently, requests for such approval occasionally are received too late for the section to act on prior to the program being offered. In the past, courses which are already being taught have been disapproved.

Policy Analysis

Requiring advance submission of proposed educational programs will permit the Social Worker Section to review the programs and recommend changes before the courses are offered.

Statutory Authority

Sections 15.08 (5) (b) and 227.11 (2), Stats.

Staff Time Required

80 hours of state employee time and 50 hours of board member time.

Social Workers, Marriage and Family Therapists and Professional Counselors

Subject

To permit applicants to supplement coursework taken in a non-clinical master's or doctoral degree program, by taking clinical courses, including clinical field training, in order to complete the requirements for certification as Independent Clinical Social Worker.

Description of Policy Issues

Objective of the rule. The Social Worker Section issues four certifications: Certified Social Worker, Independent Social Worker, Advanced Practice Social Worker, and Independent Clinical Social Worker (CICSW). Certification at the ICSW level requires that the applicant has completed a master's or doctoral degree in social work with a concentration in clinical social work, including completion of supervised clinical field training. Currently, there is no way for a person who obtained a non-clinical social work degree to later obtain clinical experience and apply for certification at the ICSW level. Discussions with schools of social work in Wisconsin indicate that postgraduate clinical study can be arranged. The change will probably be made to SFC 3.09.

Policy Analysis

The proposed change will permit social workers to qualify for clinical certification by obtaining supplemental education and experience. Under s. 457.03 (1), Stats., the board may

promulgate rules to establish minimum standards for educational programs.

Statutory Authority

Sections 15.08 (5) (b) and 227.11 (2), Stats.

Staff Time Required

80 hours of state employee time and 250 hours of University employee time.

Transportation

Subject

This rule making will amend ch. Trans 401 to: (1) to revise erosion and storm water management standards for transportation projects administered by WisDOT in order to avoid potential inconsistencies between Trans 401 and proposed NR 151; (2) clarify responsibility for erosion and storm water controls; (3) specify a process for implementing changes to erosion control plans required by weather or site conditions, and the permissible scope of those changes; and (4) modify performance standards for erosion control and storm water management practices to enhance state water quality.

Description of Policy Issues

Currently ch. Trans 401, which was promulgated in 1994, establishes construction site erosion control and storm water management standards for WisDOT administered projects. Those standards are implemented through WisDOT's Facilities Development Manual and are incorporated into project specifications. DNR has proposed new rules that contain different and more extensive erosion control and storm water management standards for transportation facilities.

Amending Trans 401 will update the rule to reflect experience gained in implementing the rule, particularly in the area of storm water management. Additionally, with the cooperation of DNR, WisDOT wants to develop a workable, cost-effective transportation sector approach to erosion control and stormwater management standards. The goal is to harmonize Trans 401, the WisDOT/DNR Memorandum of Agreement, proposed NR 151 and existing NR 216. One benefit will be that contractors and others working on transportation construction projects will not be confused by inconsistent requirements in the rules of various agencies.

Alternatives are the following:

1. Do nothing. DNR is promulgating NR 151, which purports to apply erosion control and storm water management standards to transportation facilities. Proposed NR 151 contradicts provisions in Trans 401, which may cause uncertainty and confusion among contractors and state agency personnel as to the precedence and applicability of the conflicting rules.

2. Wait for a request to amend Trans 401. That request could come from DNR, contractors or local units of government after DNR promulgates NR 151. This alternative could eventually result in consistency between Trans 401 and NR 151. This approach would likely result in legal disputes between contractors, WisDOT and DNR as to the applicability of inconsistent rules. This approach also delays a resolution of questions concerning best management practices required on transportation projects and costs involved.

3. Begin revising Trans 401 before NR 151 is promulgated in conflict with Trans 401. This alternative offers the opportunity to coordinate Trans 401 with NR 151 and to specify how Trans 401 and NR 151 will be implemented in the field. Amending Trans 401 concurrent with the promulgation of NR 151 will eliminate confusion regarding what erosion controls and storm water management activities are required of transportation facilities and construction projects.

Statutory Authority

ss. 30.12 (4), 85.075, 85.16 (1), 85.19 (1), 86.07 (2), 114.31 (7), and 227.11 (2), Stats.

Staff Time Required

Approximately 1000 hours, which represents department staff time.

**Workforce Development
(Unemployment Insurance)****Subject**

Revision to ch. DWD 128 relating to an unemployment insurance requirement that a claimant be able to work and available for work.

Description of Policy Issues

Objective of the rule. Section DWD 128.02 currently provides a grace period for claimants who have uncontrollable restrictions that limit them to less than 15% of suitable work and whose employment was terminated for

reasons unrelated to those restrictions. The department has never intended that this provision mean that claimants who were not able and available for any work would be eligible for UI. However, in light of the recent LIRC decision in *Vuttiaphan Honea v. Milwaukee Ballet Company*, the federal Department of Labor has expressed concern that s. DWD 128.02 could be read to mean that Wisconsin was not following the federally-mandated able and available requirement for eligibility. The proposed rule will clarify that claimants must be available for some work to be eligible under this provision.

Statutory Authority

Also in response to Department of Labor concerns over the LIRC decision, the proposed rule will clarify that s. DWD 128.02 does not apply to aliens who are not able and available for work because their authorized work has ended or their work authorization period has expired. There has been some confusion in situations where the authorized work has ended but the work authorization period is not expired. However, since federal immigration law provides that once the authorized work has ended the alien must depart the United States, these claimants cannot be considered able and available for work and are not eligible for unemployment insurance.

The LIRC decision is available at <http://www.dwd.state.wi.us/lirc/ucdecsns/654.htm>.

Staff Time Required

85 Hours

Submittal of rules to legislative council clearinghouse

Please check the Bulletin of Proceedings for further information on a particular rule.

Agriculture, Trade and Consumer Protection

Rule Submittal Date

On January 25, 2001, the Department of Agriculture, Trade and Consumer Protection submitted a proposed rule to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rule affects ch. ATPC 48 relating to drainage district finances and grants to county drainage boards.

Agency Procedure for Promulgation

A date for the public hearing will be scheduled.

Contact Information

If you have questions, please contact:

Dave Russell
Division of Agricultural Resource Management
Telephone: (608) 224-4627
Mailing Address:
2811 Agriculture Drive
PO Box 8911
Madison, WI 53718-6777

Workforce Development

Rule Submittal Date

On January 30, 2001, the Department of Workforce Development submitted proposed rules to the Legislative Council Rules Clearinghouse.

Analysis

The proposed rules affect s. DWD 290.155 (1) relating to the annual adjustment of thresholds for application of prevailing wage rates.

Agency Procedure for Promulgation

A public hearing is required and will be held on February 27, 2001. The organizational unit responsible for the promulgation of the proposed rules is the DWD Equal Rights Division.

Contact Information

If you have questions, please contact:

Elaine Pridgen
Telephone: (608) 267-9403
Email: pridgel@dwd.state.wi.us
Mailing Address:
201 East Washington Avenue
PO Box 7946
Madison, WI 53707-7946

Rule-making notices

Notice of Hearing Agriculture, Trade and Consumer Protection (Reprinted from 1/31/01 Wis. Adm. Register)

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces it will hold a public hearing on its emergency rule to create s. ATPC 10.21 (10) (c) and (15) relating to reimbursement of Johne's disease testing costs. The public hearing will be held on **Tuesday, February 13, 2001** at 2:00 p.m. at the following location:

Department of Agriculture, Trade and Consumer Protection
Prairie Oak State Office Building
Room 106
2811 Agriculture Drive
Madison, Wisconsin

Public comment is being sought on the Department's emergency rule, pursuant to s. 227.24 (4), Stats., which requires that a public hearing be held within 45 days after an emergency rule is adopted. Following the public hearing, the hearing record will remain open until Wednesday, February 14, 2001 to receive additional written comments.

An interpreter for the hearing impaired will be available on request for this public hearing. Please make reservations for a hearing interpreter by Monday, February 5, 2001 either by writing to Lynn Miller, Division of Animal Health, P.O. Box 8911, Madison, WI 53708-8911 (telephone 608 224-4883) or by calling the Department TDD at 224-5058.

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory Authority: ss. 93.07 (1), and 95.197 (2).

Statute Interpreted: s. 95.197.

Johne's disease (paratuberculosis) is a serious disease of cattle. The 1999-2001 biennial budget act (1999 Wis. Act 9) established a grant program to help cattle owners pay for Johne's disease testing. The department of agriculture, trade and consumer protection (DATCP) administers the grant program. This rule establishes standards for the grant program, as required by the biennial budget act.

Background

Under s. 95.195, Stats., and current DATCP rules, a seller warrants that cattle are free of Johne's disease at the time of sale unless the seller discloses to the prospective buyer the current Johne's disease herd classification of the source herd. Every herd of cattle has a Johne's disease herd classification.

A herd is automatically classified "maximum risk for Johne's disease" unless DATCP assigns a different herd classification based on an annual herd test. DATCP may assign one of several herd classifications, based on annual herd test results. An annual herd test is voluntary. A herd owner may arrange and pay for an annual herd test, and may ask the department to classify the herd based on the test results.

Grant Program

The biennial budget act (1999 Wis. Act 9) provided \$100,000 in grant funds FY 2000-01 to help cattle owners pay for annual Johne's disease herd tests. Under this rule, a herd owner who asks the department to classify a herd based on an annual herd test may apply for reimbursement of laboratory costs associated with the annual test. When DATCP classifies the herd, it will tell the herd owner how to apply for reimbursement.

To obtain reimbursement, a herd owner must file a claim by February 1 of the year following the year in which the herd owner tests the herd. The herd owner must submit copies of bills that establish the amount of laboratory costs charged to the herd owner. DATCP will distribute available funds by June 30 (following the February 1 annual application deadline).

DATCP may reimburse all or part of an applicant's allowed claim, depending on available funding. If allowed claims exceed available funding, DATCP will pay each herd owner a pro rata share based on the amount of each herd owner's allowed claim. A herd owner may not resubmit the unpaid portion of a claim in a subsequent year.

Fiscal Estimate

The department does not anticipate this emergency rule to have a significant fiscal effect. It is estimated that 2,400 herds will be classified over a 12 month period of which approximately 80% of the herd owners will file a reimbursement claim. Each claim is expected to require 20 minutes to review and complete data entry for payment. The total cost will be approximately \$13, 200 (\$12,600 for salary and fringe and \$600 for postage). This time can be accommodated with existing staff and through reprioritization of work assignments in the office. There is no anticipated fiscal effect for local units of government.

Regulatory Flexibility Analysis

This rule establishes standards for the grant program created by 1999 Wis. Act 9 to assist cattle owners in paying for Johne's disease testing. It will affect cattle owners who wish to obtain reimbursement for a portion of the costs incurred to test their herds for Johne's disease.

When a herd owner has his or her herd tested for Johne's disease and requests that the herd be classified on the basis of that test, the department will advise the herd owner that he or she is eligible to participate in the grant program. To participate in the grant program, the herd owner must

file a claim no later than February 1 of the year following the calendar year in which the herd was tested. The owner must provide copies of bills from either the veterinarian or the laboratory to establish amount of laboratory costs incurred.

This claim filing process is the least onerous possible that is consistent with the state's need to audit and assure that grants are only given in appropriate amounts to eligible owners. The rule permits filing the claim anytime between the date their herd is classified and February 1 of the year after the testing is conducted. This allows significant flexibility for the animal owner.

It is not anticipated that the animal owner will need any significant professional skills to complete the claim form and become eligible for a grant under this rule.

Notice of Hearings

Agriculture, Trade and Consumer Protection

[CR 01-04]

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on the proposed revisions to rule, ch. ATPC 48, relating to drainage district finances and grants to county drainage boards. The hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rules. Following the public hearings, the hearing record will remain open until March 30, 2001, for additional written comments.

A copy of this rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, by calling 608-224-4627 or by sending a faxed request to 608-224-4615. Copies will also be available at the hearing location.

For the hearing or visually impaired, non-English speaking, or for those with other personal circumstances which might make communication at the hearing difficult, this agency will, to the maximum extent possible, provide aids including an interpreter, or a non-English, large print or taped version of hearing documents. Please contact the address or phone number listed above or the TDD telephone at 608-224-5058 as soon as possible. The hearing locations are handicap accessible.

The following two hearings are scheduled:

Tuesday, February 27, 2001, 7:00 PM until 9:00 PM

Outagamie County Highway Department
1313 Holland Road
Appleton, WI

Wednesday, February 28, 2001, 7:00 PM until 9:00 PM

Jefferson County Courthouse
307 Main Street, Room 202
Jefferson, WI

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory Authority: ss. 93.07 (1), 88.11, and 88.15 (2)

Statutes Interpreted: ss. 88.15 and 88.18

In the 1999-2001 biennial budget act (1999 Wis. Act 9), the Legislature created a state grant program to help county drainage boards comply with new legal requirements related to drainage districts. This rule implements that grant program. This rule also clarifies that county drainage boards must keep their drainage district accounts with the county treasurer.

Background

Drainage districts are special purpose districts formed to drain land, primarily for agricultural purposes. Drainage districts control the flow of water in large areas of the state, and have a major impact on agriculture, land use and the environment. Some districts have been in existence since the 1880s. There are approximately 199 drainage districts located in 30 counties.

A county drainage board oversees all the drainage districts within each county. The Wisconsin department of agriculture, trade and consumer protection (DATCP) helps county drainage boards comply with state drainage laws, ch. 88, Stats., and ch. ATPC 48, Wis. Adm. Code.

When a drainage district is created, the circuit court approves drainage district specifications that determine the rights and responsibilities of affected landowners. But many old drainage specifications are unclear, and some have been lost or destroyed. A lack of clear specifications can lead to costly problems and legal disputes.

New Legal Requirements

Recent law changes require county drainage boards to update the specifications for all drainage districts. For each drainage district, a county drainage board must create a professional quality map set showing drainage district boundaries, drain alignments, drain cross-sections and drain grade profiles. Drainage boards must also develop plans to maintain drainage districts according to the updated specifications.

County drainage boards must assess drainage district landowners in order to pay for drainage district specifications, maintenance plans and other costs. Drainage boards must assess costs according to the benefits that landowners derive from the drainage district. In order to assess costs fairly, some county drainage boards may need to modernize their outdated assessments of landowner benefits.

Grant Program

In the 1999-2001 biennial budget act, the Legislature provided grant funds to help county drainage boards meet their new legal responsibilities. The Legislature provided \$500,000 for the state fiscal year ending June 30, 2001, with a possibility of continued annual appropriations until June 30, 2006. From these appropriations, DATCP may award grants for 60% of eligible drainage board costs.

Initial Grants

On September 15, 2000, DATCP awarded drainage board grants for the state fiscal year ending June 30, 2001. DATCP offered a total of just over \$450,000 to 12 county drainage boards. DATCP awarded grants for the following types of projects, in descending priority order:

- Drainage specifications (map sets).
- Drainage benefit reassessments.
- Drainage district maintenance plans.

If the Legislature continues to appropriate funds, DATCP will continue to award drainage board grants in future fiscal years. This rule establishes standards and procedures for the grant program.

County Drainage Board Accounts

According to s. 88.18, Stats., the county treasurer must serve as treasurer of all drainage districts under the jurisdiction of the county drainage board. The county treasurer may deduct a portion of the interest earned on county drainage board accounts, to cover relevant costs incurred by the county treasurer and county zoning administrator. The county drainage board may appoint its own treasurer, who serves as deputy county treasurer. This rule clarifies the handling of county drainage board funds, to ensure proper documentation and accountability.

Rule Contents

Grants to County Drainage Boards; General

Under this rule, DATCP may award grants to county drainage boards to help them comply with ch. 88, Stats., and ch. ATCP 48, Wis. Adm. Code. A grant may pay a county drainage board for up to 60 percent of the drainage board's costs to do any of the following:

- Develop and adopt drainage district specifications (map sets).
- Reassess benefits in a drainage district.
- Develop and adopt drainage district maintenance plans. (Grants do not pay for actual maintenance costs.)
- Carry out other eligible projects identified in DATCP's annual request for grant proposals.

Annual Request for Grant Proposals

Under this rule, DATCP must annually request grant proposals from county drainage boards. DATCP must issue its annual request, in writing, to each county drainage board. The request must include all the following:

- The amount of grant funds available for distribution in the grant year. Each grant year ends on June 30.
- The types of projects for which county drainage boards may request funding.
- DATCP's grant priorities, if any.
- General grant terms and conditions that may affect grant applications.
- Grant application procedures.
- A grant application deadline.
- A grant application form.

Grant Applications

To apply for a grant, a county drainage board must submit a completed grant application form that includes all the following:

- A description of the project for which the county drainage board seeks a grant.
- The estimated cost of the project.
- The county drainage board's plan for financing the project.
- Competitive bidding or other procedures that the county drainage board will use to control project costs.
- Other information required by DATCP.

Grant Awards

Under this rule, DATCP must act on all grant applications within 90 days after the annual grant application deadline. DATCP must notify all grant applicants of its grant awards.

Grant Contracts

Under this rule, DATCP must enter into a grant contract with each grant recipient. The contract must specify grant terms and conditions. DATCP must distribute grant funds according to the grant contract.

Grant Payments

DATCP will make grant payments after the county drainage board documents that it has completed the funded project and paid its share of the project costs. DATCP will not pay any project costs incurred after the end of the grant term specified in the grant contract.

A county drainage board must submit a payment request on a form provided by DATCP. The county drainage board must document that it has completed the project and paid its share of the project costs.

DATCP will make grant payments to the county treasurer, for the benefit of the county drainage board. If the county drainage board hires an agent to complete a project on its behalf, DATCP may make a check jointly payable to the county treasurer and that agent.

County Drainage Board Accounts

Under this rule, whenever a person receives funds on behalf of a county drainage board or any drainage district, that person must promptly deposit those funds with the county treasurer. The county treasurer may not pay out any funds without proper authorization from the county drainage board.

Pursuant to s. 88.18(1), Stats., the county treasurer may retain a portion of the interest received on drainage district funds, to cover costs that the county treasurer and county zoning administrator incur to provide services to the county drainage board. The amount retained may not exceed the amount authorized by s. 88.18(1), Stats.

Under this rule, the county treasurer must keep a separate account for each drainage district. The county treasurer must keep complete accounting records in the county treasurer's office. The accounting records must include records of all receipts, deposits, payments, county deductions and account balances. The county drainage board must also file, with the county treasurer, a copy of every DATCP grant contract with the county drainage board.

The county treasurer must retain the accounting records as county records. Except as provided in ch. 88, Stats., or ch. ATCP 48, the county treasurer must treat the records as the treasurer would treat comparable county accounting records for retention and disposal purposes.

Under this rule, if a county drainage board appoints its own treasurer, that treasurer serves as a deputy of the county treasurer. The county drainage board treasurer must promptly deposit, with the county treasurer, all funds received on behalf of the county drainage board or any drainage district. The drainage board treasurer may not pay out any funds before depositing them with the county treasurer.

The drainage board treasurer may not pay out any funds without proper authorization from the county drainage board *and* the county treasurer. The county treasurer may not refuse to authorize a payment approved by the county drainage board, unless there are insufficient funds in the drainage district account to make that payment. The county treasurer must keep complete records of all drainage district accounts (the drainage board treasurer may keep duplicate records).

Fiscal Estimate

Impact of Rule Revision to State Government

Chapter ATCP 48 is administered by the Department of Agriculture, Trade and Consumer Protection (DATCP). The proposed rule revisions codify a cost-share grant program intended to distribute as much as \$500,000 per year for a maximum of six years to county drainage boards. Administration of these grants will be handled by existing DATCP staff. The DATCP will experience some increase in costs associated with WiSMART charges and other miscellaneous administrative expenses, such as postage; however, these administrative costs will be minimal and will be absorbed by the DATCP. Funds provided by the Legislature for this program are in a new general purpose revenue appropriation.

Impact of Rule Revision to County Drainage Boards

Funds provided by the DATCP will go directly to county drainage boards to pay 60% cost-sharing for eligible expenses associated with the development of district specifications, benefits reassessment, and compliance (maintenance) plans. The availability of these funds will encourage drainage boards to proceed with this work as the grant funds greatly reduce the financial burden on drainage district landowners. District landowners will be assessed by the drainage board for the remaining 40% of eligible project expenses.

Initial Regulatory Flexibility Analysis

Scope of the Rule

The proposed revision of Chapter ATCP 48, Wis. Adm. Code, will have a positive impact on small businesses. The revision codifies a newly instituted cost-share grant program designed to assist drainage boards with producing specific work products, which will in turn improve their management of drainage districts. It establishes the process and timelines for drainage boards to apply and receive grant funds. These funds are specifically intended to reduce the financial burden on drainage district landowners, as it is the landowners who finance compliance with existing rule requirements. Items that may be cost-shared include the development of:

1. District Specifications (including detailed maps)
2. Benefits Reassessments
3. Compliance (maintenance) Plans

The rule revision also establishes County Treasurers as the official treasurers for all drainage board financial matters. A drainage board may appoint a deputy treasurer to assist the County Treasurer with management of drainage board fiscal matters, but it is the county treasurer who is responsible for retention of all grants-related documents.

Businesses Affected

The small businesses affected by the rule revision include engineering consulting firms and others who will be hired by county drainage boards to produce the specific work products. Additionally, farms and agricultural food processors whose lands lie within the boundaries of drainage districts will benefit from the cost-sharing to be provided; as members of the drainage district, their financial burden will be reduced by 60 percent. It is estimated that there are 199 drainage districts located in 30 Wisconsin counties. Currently, 24 counties have drainage boards in place. Only drainage boards may request grant funds from the department.

Fiscal Impact

Small businesses in drainage districts will experience a positive fiscal impact from this rule revision as drainage boards are provided financial assistance to comply with existing rule provisions. This rule revision provides up to \$500,000 per year for six years in cost-share assistance. Prior to this revision, small businesses located within drainage districts would have borne the entire cost of complying with ch. ATCP 48 requirements.

Prior to this revision, a very small percentage of drainage boards took the initiative to produce drainage district specifications and compliance (maintenance) plans required by ch. ATCP 48. Most drainage boards considered the cost of complying with the rule to be too great a burden on district landowners. It is anticipated that this cost-share assistance will greatly reduce that burden and, thereby, encourage greater compliance with the rule. It is estimated that this funding will allow about ten drainage boards to produce work products for a total of 40 districts each year. At this pace, it is anticipated that all districts may be assisted over the six-year life of the grants.

Record Keeping

The proposed rule revision will not impose any new record keeping requirements on small businesses. A few new record keeping requirements are required of county treasurers and drainage boards members.

Professional Skills Required to Comply

Small businesses will not need to acquire any new skills — or retain additional professional services — to comply with the rule revisions.

Notice of Hearing
Commerce
(Flammable & Combustible Liquids, Ch. Comm 10)

NOTICE IS HEREBY GIVEN that pursuant to ss. 101.02 (1) and 101.09 (3), Stats., the Department of Commerce will hold a public hearing on proposed rules relating to an emergency rule delaying the effective date of required upgrades to aboveground bulk tanks that were in existence on May 1, 1991.

The public hearing will be held as follows:

Date and Time:

February 27, 2001
Tuesday
Commencing
at 10:00 AM

Location:

Thompson Commerce Center
3rd Floor, Room 3C
201 West Washington Avenue
Madison, WI

Interested persons are invited to appear at the hearing and present comments on the proposed rules. Persons making oral presentations are requested to submit their comments in writing. Persons submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until March 9, 2001, to permit submittal of written comments from persons who are unable to attend a hearing or who wish to supplement testimony offered at the hearing. **Written comments should be submitted to Duane Hubeler, Department of Commerce, Program Development Bureau, P.O. Box 2689, Madison, WI 53701-2689.**

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 266-8741 or (608) 264-8777 (TTY) at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

Analysis Prepared by the Department of Commerce

Wisconsin Administrative Code Chapter Comm 10, Flammable and Combustible Liquids Code, became effective on 5/1/91. Section Comm 10.345 (2) contains requirements for bulk tanks in existence on that date to be provided with specific containment or leak detection upgrades within 10 years of that date. Some concerns have been expressed on the impact that compliance date could have on heating oil supplies and prices this winter. Construction requirements could result in a substantial number of tanks storing heating oil to be closed during the winter heating season in preparation for the required upgrades.

Based on these concerns, the department has agreed to extend the compliance deadline for 3 months until 8/1/01 if approvable tank system upgrade plans have been submitted to the department by 2/1/01.

Copies of Proposed Rule

Paper copies of the proposed rules may be obtained without cost from Heather Taplick, Department of Commerce, ERS Division, P.O. Box 7838, Madison, WI 53701-7838, Email htaplick@commerce.state.wi.us, telephone (608) 261-7726 or (608) 264-8777 (TTY). Copies will also be available at the public hearing.

Fiscal Estimate

The emergency rule simply extends by 3 months a deadline to upgrade aboveground bulk tanks. There are no additional enforcement requirements or anything that would affect revenues.

Regulatory Flexibility Analysis

Any small business that owns or operates aboveground bulk tanks could be affected. This emergency rule provides an additional 3 months to comply with tank upgrade requirements that have been in the code since its inception on 5/1/91.

There are no new procedures that are required to comply with these rules. This emergency rule simply provides for a delay in the effective date of previously approved code requirements.

There are no professional skills needed to comply with these rules.

Notice of Hearings Canceled
Health and Family Services
(Health, Chs. HFS 110-199)
[CR 00-172]

NOTICE IS HEREBY GIVEN That the two DHFS hearings relating to **ch. HFS 163** scheduled to occur on February 22, 2001 in Waukesha and on February 23, 2001 in Wausau are canceled. There are no current plans to reschedule them.

Notice of Hearings
Public Instruction
[CR 00-185]

NOTICE IS HEREBY GIVEN That pursuant to ss. 118.33 (2) (c) and (4) (a), 121.02 (5) and 227.11 (2) (a), Stats., and interpreting ss. 118.33 (1) (a) and (b) and (2) (a) and 121.02 (1) (L), Stats., the department of public instruction will hold public hearings as follows to consider the amending of ch. PI 18, relating to social studies high school graduation requirements. The hearings will be held as follows:

Date and Time:**March 5, 2001**

3:00 – 7:00 p.m.

Location:

Rice Lake
Wisconsin Indianhead Technical
College
1900 College Drive
Room 245

March 8, 2001

3:00 – 7:00 p.m.

Green Bay
Northeast Wisconsin Technical
College
2740 W. Mason Street
Room 2327

March 13, 2001

3:00 – 7:00 p.m.

Janesville
Blackhawk Technical College
6004 Prairie Road
North Commons 1400 B Lower Level

The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Les Wakefield, Consultant, Democracy Education, at (608) 266–3560 or leave a message with the Teletypewriter (TTY) at (608) 267–2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

The administrative rule is available on the internet at <http://www.dpi.state.wi.us/dpi/dfm/pb/demcracy.html>. A copy of the proposed rule and the fiscal estimate may be obtained by sending an email request to lori.slauson@dpi.state.wi.us or by writing to:

Lori Slauson,
Administrative Rules and Federal Grants Coordinator
Department of Public Instruction
125 South Webster Street
P.O. Box 7841
Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above address no later than March 19, 2001, will be given the same consideration as testimony presented at the hearing. Comments submitted via email will not be accepted as formal testimony.

Analysis by the Department of Public Instruction

Chapter PI 18 requires, in part, that students receive 4 credits of English, 3 credits of social studies, 2 credits of math, 2 credits of science and 1.5 credits of physical education to graduate from high school. Currently, each subject area requires certain instruction to be offered. Specifically, social studies requirements include instruction in local and state government. The proposed rules will require, as part of the 3 credits offered in social studies, that a school district offer a *one semester course of instruction* in local, state, *tribal* and *federal* government that focuses on democracy as recommended by the State Superintendent's Civics Action Task Force. Adding instruction in tribal and federal government to the social studies high school graduation requirement aligns the rule with Wisconsin's Model Academic Standards for social studies established by Governor Thompson in 1998. Also, s. 121.02 (1) (L) 4., Stats., requires that school boards, as part of a social studies curriculum, provide instruction in the tribal sovereignty of the federally recognized American Indian tribes and bands located in this state.

The proposed rules will also add a reference to s. 118.33 (1) (b), Stats., to align the rule with statutory language.

Fiscal Estimate

The proposed rule will modify high school graduation requirements relating to social studies. In addition to the current requirement that instruction be provided in local and state government, the rules will require instruction in tribal and federal government that focuses on democracy. The instruction in local, state, tribal and federal government that focuses on democracy shall be provided as a one–semester course. The one–semester course will be part of the three required credits offered in social studies. The proposed rules should not have a fiscal effect on local school districts because:

- Current rules and statutes require instruction in local and state government [s. PI 18.03 (1) (a) 2., Wis. Adm. Code, and s. 118.33 (1) (a) 1., Stats.]
- Wisconsin's Model Academic Standards for social studies already specify various performance standards in the areas of federal government and democracy education. Since most public school boards have adopted Wisconsin's Model Academic Standards, instruction relating to federal government and democracy education should already be in place.
- Wisconsin's Model Academic Standards and current statutes require instruction in the history, culture and tribal sovereignty of the federally recognized American Indian tribes and bands located in this state [s. 121.02 (1) (L) 4., Stats.]

Schools may have to modify their social studies curriculum to include the instruction specified in the rule in a one–semester course. However, the instruction in the specified areas should not increase costs because it is assumed that such instruction is already provided by school districts.

The rules will have no state fiscal effect.

Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114 (1) (a), Stats.

Notice of Hearings Public Instruction [CR 00-186]

NOTICE IS HEREBY GIVEN That pursuant to ss. 121.02 (5) and 227.11 (2) (a), Stats., and interpreting ss. 121.02 (1) (m), Stats., the department of public instruction will hold public hearings as follows to consider the amending of ch. PI 26, relating to the education for employment program. The hearings will be held as follows:

Date and Time:

March 15, 2001
3:30 – 7:30 p.m.

Location:

Wausau
North Central Technical College
1000 West Campus Drive
Room E-101

March 22, 2001
2:00 – 4:30 p.m.

Madison
GEF 3 Building
125 South Webster Street
Room 041

The hearing sites are fully accessible to people with disabilities. If you require reasonable accommodation to access any meeting, please call Richard Becker, Education Program Specialist, at (608) 266-5197 or leave a message with the Teletypewriter (TTY) at (608) 267-2427 at least 10 days prior to the hearing date. Reasonable accommodation includes materials prepared in an alternative format, as provided under the Americans with Disabilities Act.

Copies of Rule and Contact Person

The administrative rule is available on the internet at <http://www.dpi.state.wi.us/dpi/dfm/pb/eduempl.html>. A copy of the proposed rule and the fiscal estimate may be obtained by sending an email request to lori.slauson@dpi.state.wi.us or by writing to:

Lori Slauson,
Administrative Rules and Federal Grants Coordinator
Department of Public Instruction
125 South Webster Street
P.O. Box 7841
Madison, WI 53707

Written comments on the proposed rules received by Ms. Slauson at the above address no later than March 29, 2001, will be given the same consideration as testimony presented at the hearing. Comments submitted via email will not be accepted as formal testimony.

Analysis by the Department of Public Instruction

The proposed rules will align the education for employment requirements under ch. PI 26 with vocational/technical activities and programs being developed and implemented by public school districts. Many of the components in the current rule are the same but reorganized in the modified rule. Such components include the development of a long-range plan based on labor market information, employment needs, periodic follow-up studies of graduates, and an evaluation of current programs and staff development needs; the designation of a staff person to coordinate the program; allowance for career exploration and school supervised work experiences; and coordination with the school district standards, vocational skills, high school graduation requirements, and programs for children at risk.

The rules will remove the requirement that school boards either appoint an education for employment council or participate in a CESA council. Instead, each board shall ensure representation on the tech prep council created under s. 118.34, Stats., and the tech prep council shall annually report to the board regarding the council's progress toward achieving its goals and objectives. In addition, the rule will:

- Add definitions of advanced placement, advanced standing, articulation course agreement, career awareness, career planning and preparation, transcribed credit and postsecondary credit for clarity.
- Clarify career development components to be offered to pupils at the elementary, middle and high school levels (career awareness at the elementary grade levels, career exploration at the middle grade levels, and career planning and preparation at the high school levels).
- Clarify the type of information to be collected when conducting graduate follow-up studies (graduate satisfaction with the program, and graduate placement in jobs, military, apprenticeship programs or educational institutions).
- Require boards to include specified information on pupil transcripts (the title of the course; the high school credits earned and whether those credits were earned through advanced standing, transcribed credit, or the advanced placement program; and participating postsecondary institution, when appropriate).
- Require the program to integrate requirements under the tech prep, youth options, and youth apprenticeship programs.

Fiscal Estimate

Many of the rule modifications made to the education for employment rule do not establish new requirements but reorganize the existing requirements. The requirements that may have a fiscal effect on school districts include:

1. Requiring school boards to include specified information on pupil transcripts (the title of the course; the high school credits earned and whether those credits were earned through advanced standing, transcribed credit, or the advanced placement program; and participating postsecondary institutions, when appropriate).

2. Clarifying the type of information to be collected when conducting graduate follow-up studies. Although graduate follow-up studies have always been required in the rule, specific information is now required to be collected for uniformity. Such information includes graduate satisfaction with the program and graduate placement in jobs, military, apprenticeship programs or educational institutions.

3. Requiring the program to integrate requirements under the tech prep, youth options, and youth apprenticeship programs. The rule will not require any formal procedures for integrating the education for employment program with the programs specified. It is meant more to acquaint program staff with similar programs so the programs can be coordinated, possibly preventing duplicative reporting under each program.

4. Eliminating the requirement that a school board either create its own council or join a CESA council. Instead require the school district to provide for representation at the tech prep council created under s. 118.34, Stats.

The level of compliance with the rule requirements by school districts is unknown. Many districts are already meeting many of the proposed recommendations as they are already required under programs such as the Carl Perkins Act. While it is assumed that the proposed modifications under items 1 and 2 may result in additional administrative and programmatic costs to some public school districts, the extent to which a district can absorb these costs in their budgets is unknown. At the same time, the requirements under items 3 and 4 may result in a cost savings to public school districts by coordinating program efforts and eliminating the requirement that a school board either: 1) establish a council, or 2) join a CESA council. Therefore, the local fiscal estimate of the proposed modifications to ch. PI 26 is indeterminable.

The proposed rules will have no state fiscal effect.

Initial Regulatory Flexibility Analysis

The proposed rules are not anticipated to have a fiscal effect on small businesses as defined under s. 227.114 (1) (a), Stats.

Notice of Hearing **Department of Workforce Development** **(Prevailing Wages, Chs. DWD 290–294)** **[CR 01–05]**

NOTICE IS HEREBY GIVEN that pursuant to ss. 66.0903(5) and 103.49(3g), Stats., the Department of Workforce Development proposes to hold a public hearing to consider the amendment of s. DWD 290.155(1), relating to the annual adjustment of thresholds for application of prevailing wage rates.

Hearing Information

Date and Time:

February 27, 2001
Tuesday
Commencing
at 1:30 AM

Location:

G.E.F. 1 Building, Room 400X
201 East Washington Avenue
Madison, WI

Interested persons are invited to appear at the hearings and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing.

An accessible entrance to the building is available via a ramp from the corner of Washington Avenue and Webster Street to the Webster Street door. If you have special needs or circumstances regarding communication or accessibility at the hearing, please call (608) 267–9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

Analysis Prepared by the Department of Workforce Development

Statutory authority: Sections 66.0903(5) and 103.49(3g).

Statutes interpreted: Sections 66.0903(5) and 103.49(3g).

The state prevailing wage laws require that when a state agency or local governmental unit contracts for the construction of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance with those wage rates. Under ss. 66.0903(5) and 103.49(3g), Stats., and the current s. DWD 290.155(1), the state prevailing wage rate laws do not apply to any single-trade public works project for which the estimated cost is below \$34,000, and it does not apply to any multi-trade public works project for which the estimated cost is below \$168,000.

Pursuant to ss. 66.0903(5) and 103.49(3g), Stats., and s. DWD 290.15, the Department is required to adjust the dollar amounts of the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. The threshold adjustment is based on changes in the construction cost index published in the *Engineering News–Record*, a construction trade publication. The proposed rule adjusts the thresholds from \$34,000 to \$35,000 for single-trade projects and from \$168,000 to \$172,000 for multi-trade projects based on a 2.6% increase in the construction cost index between December 1999 and December 2000.

Rule Text

SECTION 1. DWD 290.155(1) is amended to read:

DWD 290.155(1) This chapter does not apply to any single-trade public works project for which the estimated cost of completion is below \$34,000 \$35,000, and any multi-trade public works project for which the estimated cost of completion is below ~~\$168,000~~ \$172,000.

Initial Regulatory Flexibility Analysis

The proposed rule does not affect small business.

Fiscal Impact

Under the proposed rule, a state agency or local governmental unit contracting for the construction of a single-trade public works project that costs more than \$34,000 but less than \$35,000 or a multi-trade project that costs more than \$168,000 but less than \$172,000 will not be covered by the prevailing wage requirement.

Contact Information

For substantive questions concerning the proposed rule, call Patricia Hewitt, Construction Wage Standards Section Chief, at (608) 266-6469.

Written Comments

Written comments on the proposed rules received at the following address no later than **March 2, 2000**, will be given the same consideration as testimony presented at the hearing. **Written comments should be submitted to: Elaine Pridgen, Office of Legal Counsel, Dept. of Workforce Development, P.O. Box 7946, Madison, WI 53707-7946, (608) 267-9403**

Submission of proposed rules to the legislature

Please check the Bulletin of Proceedings for further information on a particular rule.

Chiropractic Examining Board (CR 00-124)

Chs. Chir 3 and 5 – Relating to continuing education requirements.

Commerce (CR 00-115)

Ch. Comm 8 – Relating to mines, pits and quarries.

Elections Board (CR 00-153)

Ch. ElBd 2 – Relating to filing of and challenges to nomination papers.

Pharmacy Examining Board (CR 00-048)

Ch. Phar 7 – Relating to delegation of duties by a pharmacist.

Pharmacy Examining Board (CR 00-156)

Ch. Phar 7 – Relating to supervising pharmacy interns.

Public Instruction (CR 00-083)

Ch. PI 14 – Relating to school district audits.

Regulation and Licensing (CR 00-142)

Chs. RL 133 and 135 – Relating to home inspector examination and continuing education requirements.

Veterinary Examining Board (CR 00-144)

Chs. VE 2 to 5 – Relating to the computerized veterinary examination.

Workforce Development (CR 00-108)

Ch. DWD 42 – Relating to state directory of new hires.

Rule orders filed with the revisor of statutes bureau

The following administrative rule orders have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication date of these rules could be changed. Contact the Revisor of Statutes Bureau at (608) 266-7275 for updated information on the effective dates for the listed rule orders.

Public Service Commission (CR 98-190)

An order to create ch. PSC 179, relating to telecommunications dispute resolution and whether an alleged failure to comply with an interconnection agreement has a significant adverse effect on another party to the agreement.

Effective 3-1-01

Public notice

Department of Agriculture, Trade and Consumer Protection

Notice of Dollar Amount Adjustments for Repair Charges Subject to Mechanic's Liens

Under Wis. Stat. § 779.41(1), mechanics or repair businesses who transport, repair or perform any work on personal property at the request of the owner have a statutory lien on the property for the just and reasonable charges associated with the work, and may retain possession of the property until the charges are paid.

Generally, a mechanic's lien under Wis. Stat. § 779.41, has priority over any previously recorded security interest in the personal property but only for the appropriate charges at the specified dollar amounts below.

Under Wis. Stat. § 779.41(1m), the Department is required to annually publish adjusted dollar amounts for charges on repairs to personal property subject to mechanic's liens. The adjustments are based on the annual change in the consumer price index, all items, U.S. city average, as determined by the Bureau of Labor Statistics of the U.S. Department of Labor.

The Department has determined that current dollar amounts specified under Wis. Stats. §§ 779.41(1), (1)(a), (1)(b), and (1)(c) shall be increased by 2.7%, according to the prior year annual change in the consumer price index. Thus, the dollar amounts for charges under the mechanic's lien law are adjusted as follows:

Under Wis. Stat. § 779.41(1), mechanic's liens generally, \$1,640.

Under Wis. Stat. § 779.41(1)(a), mechanic's liens on a trailer or semi-trailer designed for use with a road tractor, \$4,920.

Under Wis. Stat. § 779.41(1)(b), mechanic's liens on road machinery, including mobile cranes, trench hoes, farm tractors, machines of husbandry, or off-highway construction vehicles and equipment, \$8,195.

Under Wis. Stat. § 779.41(1)(c) 1. to 4., mechanic's liens on vehicles:

1. More than 10,000 and less than 20,000 pounds, \$3,280.
2. 20,000 pounds or more, but less than 40,000 pounds, \$6,475.
3. 40,000 pounds or more, but less than 60,000 pounds, \$9,840.
4. 60,000 pounds or more, \$13,115.

These revised dollar amounts under the mechanic's lien law shall apply to work commenced on or after January 1, 2001 for which a lien is claimed. These revised dollar amounts shall remain in effect until the first day of the first month following publication of new adjusted dollar amounts in the *Wisconsin Administrative Register*.

Contact Information:

Merry Fran Tyron, Director
Consumer Protection Bureau
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911
Telephone: (608) 224-4921

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